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DOCKET FILE COPY ORIGINAL

January 9, 2001

Ms. Magalie Roman Salas, Secretary
Federal Communications Commission
Office of the Secretary
445-12th St., SW, RM TW-204B
Washington, DC 20554

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JAN 10 2001
FCC MAIL ROOM

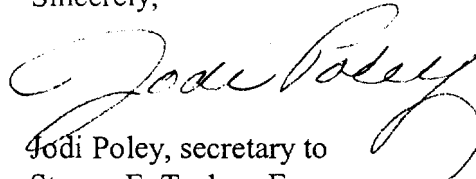
Re: Opposition to Comments of Board of County Commissioners of Churchill
County, and Opposition to Comments of Churchill County
Telephone and Telegraph
Virtual Hipster Corporation

Dear Ms. Salas:

Enclosed for filing please find an original and nine copies of the above-referenced document. Kindly file this document and return a file-stamped copy to me in the envelope provided.

Thank you in advance for your courtesy and cooperation in this matter.

Sincerely,



Jodi Poley, secretary to
Steven E. Tackes, Esq.

/jp

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List A B C D E

1 Before the
2 Federal Communications Commission
3

4 In the Matter of)
5 Virtual Hipster Corporation)
6 Petition for Preemption of)
7 Jurisdiction of the)
8 Public Utilities Commission of Nevada)
9 Pursuant to 47 U.S.C. § 252(e)(5))
10

CC Docket No. 00-2

RECEIVED

JAN 10 2001

FCC MAIL ROOM

11 Virtual Hipster Corporation Opposition to Comments of the
12 Board of County Commissioners of Churchill County, Nevada and
13 Opposition to Comments of Churchill County Telephone and Telegraph

14 COMES NOW, Virtual Hipster Corporation ("VH" or "Petitioner"), by and through its
15 undersigned counsel, and respectfully submits this Opposition to the Comments submitted by the
16 Board of County Commissioners of Churchill County, Nevada ("BCC"), and the Comments
17 submitted by Churchill County Telephone and Telegraph, d/b/a CC Communications, Inc.
18 ("CCC")¹ in the above referenced matter.

19 The Comments filed by BCC and CCC continue a pattern of preventing telecommunications
20 competition, misstate Nevada law, misapply the Act and mischaracterize even its own position
21 taken before the Nevada Public Utilities Commission ("NPUC") in which CCC asked the NPUC
22 to proceed with the arbitration but refused to consent to being bound by any rates that might
23 come from that proceeding. VH respectfully requests that this Commission proceed with
24

25 ¹ CCC is a county-owned and operated local exchange carrier organized as an enterprise fund.

1 arbitration under the Act, as it is now clear, that no other process exists to permit competitive
2 entry in Churchill County, Nevada.

4 **PROCEDURAL BACKGROUND.**

5 By way of background, as detailed in the Petition, VH has been attempting to obtain
6 interconnection in Churchill County, Nevada, with the incumbent county-owned
7 telecommunications carrier (CCC) since 1997. Beginning in 1997, repeated requests, proposals,
8 and denials occurred.² Despite these extensive attempts³ at negotiation and progress, VH has
9 steadfastly pursued the introduction of telecommunications competition in Nevada and attempted
10 to acquire interconnection as permitted by the Telecommunications Act of 1996, 47 USC §251 et
11 seq., ("Act").

12 On April 28, 2000, CCC acknowledged receipt of a complete pricing proposal.⁴ After
13 months of attempts to meet concerns raised by CCC, including numerous cost model input
14 modifications, CCC notified VH that it would not provide geographically deaveraged rates nor
15 separate rates for DLC vs.non-DLC loops.⁵ Thus, upon a complete failure of attempts to obtain
16 interconnection terms and rates, VH notified CCC that it had no alternative but to proceed with
17 arbitration.⁶

18
19 ² VH Interconnection request attached hereto as Exhibit A. Although earlier requests were made, this request followed CCC's refusal to even entertain an interconnection request.

20 ³ These efforts included numerous barriers to entry, including but not limited to, CCC's refusal to negotiate interconnection until VH's Nevada certificate was granted, having to argue and lift CCC's claim of rural exemption, accommodating CCC's disputes over a costing model, extensive work on inputs to the model only to be told months later that CCC would not separate DLC loops from non-DLC loops, and refusals to allow resale of retail services, to name a few. At each step, VH has attempted to resolve all disputes, only to be met with new ones.

23 ⁴ CCC acknowledges that communication in its Opposition at page 8.

24 ⁵ See Letter dated August 25, 2000, from CCC consultant Ben Harper to VH consultant Dr. Larry Blank, attached as Exhibit B.

25 ⁶ See Letter dated September 5, 2000, from VH consultant Dr. Larry Blank to CCC consultant Ben Harper, and Letter dated September 27, 2000, from VH attorney Steven E. Tackes to CCC attorney Kristin McMillan, attached as Exhibit C.

1 VH then proceeded with a timely Petition for Arbitration before the Nevada Public Utilities
2 Commission ("NPUC") on October 5, 2000. At the proceeding, CCC did not argue that BCC
3 would be the proper arbitrator. Instead, CCC supported the role of the NPUC as arbitrator, but
4 CCC argued to the NPUC that its owner, BCC, might not abide by any rates determined in that
5 proceeding since CCC simultaneously argued that only its owner, BCC, had rate setting
6 jurisdiction over CCC.⁷

7 BCC⁸ and CCC now argue that the NPUC is not the "state commission" under the Act, that
8 BCC is the appropriate body to arbitrate these same disputes, and that the Petition made to the
9 NPUC was not timely.

10 **THE CHURCHILL COUNTY COMMISSION IS NOT THE "STATE**
11 **COMMISSION", AS DEFINED AT 47 U.S.C. § 3(41).**

12 At the heart of the comments of BCC and CCC, is the unsupportable claim that the BCC is
13 the "state commission" as defined in the Act. Apart from the legal considerations, this
14 proposition--- that the owner of the ILEC be the arbitrator of disputes with that ILEC--- is
15 antithetical to the both the letter and the spirit of the Act. The very history of this case
16 demonstrates that BCC and CCC have to date refused to permit interconnection with VH,
17 refused to provide UNE prices for Commission designated elements, and refused competition in
18 Churchill County, Nevada. Indeed, a currently effective ordinance of Churchill County declares
19 that CCC shall be the only telephone company that can provide, in Churchill County,
20 "maintenance and repair for all private automatic exchange systems, along with associated
21 communication distribution and transmission services, with the ability to serve 400 or more

22 ⁷ See 15 page Transcript of Nevada proceedings in Docket No. 00-10009, attached hereto as Exhibit D.

23 ⁸ It appears that the comments filed by BCC do not represent the official position of BCC as there was no public
24 meeting, notice, or legal action taken by the BCC to adopt such comments or position. Nevada's Open Meeting
25 Law, NRS 241.020 requires that public bodies give adequate notice and forum for official action. A review of the
Agenda and Minutes of BCC reveals no such notice nor forum. As pointed out later in this Opposition, such
position of BCC is in direct contravention of its own stated position on competition via currently effective and
adopted ordinance.

1 telephone stations connected to the Churchill County Telephone System.”⁹ Against this
2 background, it is incredible that BCC and CCC can even argue that they can fairly decide issues
3 on which they refused to compromise.

4 Nor does the law support the claim of CCC and BCC. Admittedly, a county owned carrier is
5 a unique occurrence, but such scenario does not change the fact that the NPUC is the state
6 commission under the Act. Specifically, the Act defines “state commission” as follows:

7 “State commission.—The term “State commission” means the commission, board, or official
8 (by whatever name designated) which under the laws of any State has regulatory jurisdiction
9 with respect to intrastate operations of carriers.” 47 USC 153(41).

10 The NPUC has that direct authority¹⁰, and no such similar designation is granted by Nevada law
11 to BCC. Instead, a Nevada statutory provision gives “control, management and conduct” of
12 CCC to BCC¹¹. Such control does not extend beyond the county borders. This is far different
13 than creating a regulatory body and authorizing it to regulate intrastate carriers. Nevada law is
14 clear that the NPUC is charged with the authority and duty to regulate public utilities, which
15 includes all intrastate telecommunications carriers, and the NPUC does regularly arbitrate
16 interconnection agreements pursuant to the authority and the provisions of the Act. The NPUC
17

18
19 ⁹ See, Ordinance No. 68, Bill No. 92-E, Adopted August 6, 1992; attached hereto as Exhibit E. A review of
20 currently effective ordinances confirms that despite the passage by Congress of the Act in 1996, BCC continues to
maintain this ordinance as effective.

21 ¹⁰ NRS 704.001 confers “upon the commission the power... and the duty of the commission, to regulate public
22 utilities to the extent of its jurisdiction.” The definition of public utility includes “telephone companies and other
23 companies which provide telecommunication or a related service to the public.” Further, provisions of NRS
703.025, which were added in 1997, mandate that the NPUC shall “take such actions consistent with law as are
necessary to encourage and enhance (1) a competitive market for the provision of utility services to customers of
this state; and (2) the reliability and safety of the provision of those services with that competitive market...”

24 ¹¹ NRS Chapter 710 creates a method for counties to purchase and operate public utilities upon petition signed by
25 two thirds of its taxpayers. NRS 710.140 provides that “The control, management and conduct of any telephone
line or system so purchased, acquired or constructed by any county shall be exercised by the board of county
commissioners of such county.” Further, NRS 704.140 provides that “no general or other statute shall limit or
restrict the conduct and carrying on of such business by the board except as specifically set forth in this section.”

1 is, and has been, the state commission under the Act, and such statewide designation is not
2 extinguished because BCC owns a carrier in one county in Nevada.

3 The NPUC, not the BCC, has regulatory authority over VH, including its operations in
4 Churchill County and elsewhere in Nevada. Nowhere does the Nevada law give “regulatory”
5 authority to BCC over telecommunications carriers. Rather the law provides that BCC, as
6 owner, has “control, management and conduct” over the county-owned facilities. BCC has no
7 more regulatory power than any other owner of a business. As such, it is also clear that the BCC
8 is not a disinterested and impartial participant in this process. As representatives of the county
9 residents-owners of CCC, the Board cannot embrace the mandates of competition found in the
10 Act if such provisions of the Act are in opposition with the majority opinion and pressure from
11 the owners/residents; and, therefore, the Board cannot serve as impartial arbitrator of disputes
12 that arise between CCC and a Competitive Local Exchange Carrier (“CLEC”). Against this
13 background, BCC cannot be considered a “state commission” under the Act.

14 Moreover, as regards the Act, CCC has previously submitted itself to the jurisdiction of the
15 NPUC. CCC sought and received the approval of the NPUC for Eligible Telecommunications
16 Carrier status in NPUC Docket No. 97-11053.¹² Such designation is reserved to the “state
17 commission”¹³, and thus CCC is disingenuous when it claims that the NPUC is not the “state
18 commission” under the Act.

19 Even in the case at hand, CCC argued that the NPUC should arbitrate the interconnection
20 dispute between CCC and VH¹⁴. However, after pointing out that CCC and BCC may not

21
22 ¹² See NPUC Docket No. 97-11053, Application, Notice and Order, attached hereto as Exhibit F.

23 ¹³ 47 USC §214

24 ¹⁴ The transcript and the position of CCC are a bit confusing, although it appears that they consented to be bound by
25 an arbitration decision if made by the NPUC, but not that the rates could be enforced. Transcript pp.5-9, attached
Exhibit D.

1 consider themselves bound by the decision¹⁵, it was logical for the NPUC to decide to abstain
2 from arbitration, as is any state commission's prerogative under the Act.¹⁶ It was clear that the
3 NPUC believed that its decision to abstain would permit the parties to proceed before this
4 Commission.¹⁷

5 Contrary to the Comments of CCC, VH has never considered BCC to be the "state
6 commission" in Nevada. CCC argues in a footnote that VH "has previously accepted the
7 Board's role..." as regards resale discounts. VH was unaware that such approval was sought by
8 CCC, and VH was certainly not a moving party to any such process. Notwithstanding, the
9 decision by CCC to seek its owner's approval for any business practice does not constitute a
10 valid exercise of regulation over the practices of VH. If this is an example of the type of full and
11 fair regulatory process envisioned by CCC, it is clear that such a process does not measure up to
12 the Act.

13 The arguments of BCC and CCC, even if accepted, result in an absurd interpretation of the
14 Act. If the BCC were to be considered the "state commission" instead of the NPUC, the BCC
15 would still have no regulatory authority over VH, and thus the BCC would lack jurisdiction to
16 proceed. The Act is not to be read into absurdity. Similarly, the BCC lacks any state law that
17 would authorize or obligate it to act consistent with the competitive goals of the Act.

18
19 ¹⁵ Transcript pp. 9-10, attached Exhibit D.

20 ¹⁶ Independent of any clarity in the Transcript, it was logical if not inevitable that the NPUC would choose not to
spend time arbitrating, given the caveats on jurisdiction raised by CCC.

21 ¹⁷ On this, the record is crystal clear. "But it would be my intention to bring an order to the full Commission
22 declining jurisdiction. And that would allow the parties to move this up to the FCC." Chairman Soderberg,
Transcript p.12., Exhibit D.

23 In contrast, CCC cites Low Tech Designs, Inc., 9 CR 1146 (1997) for the proposition that the Commission cannot
24 act since the VH Petition is based on a lack of state jurisdiction. In Low Tech, the state commissions found that the
25 requests were not jurisdictional under the Act because the petitioner was not a carrier and was not asking for
interconnection for a telecommunications service. Thus the jurisdictional concerns were over the petitioner and a
lack of applicability of the Act. Unlike Low Tech, VH is a carrier, certified by the NPUC as a telecommunications
carrier and provides telecommunications services, and as such, the defects found by the state commissions in Low
Tech are not present. The NPUC did express jurisdictional concerns over enforcing rates set in arbitration, not
concerns over whether telecommunications was involved, nor whether the Act applied. To the contrary the clear
statement of Chairman Soderberg is based upon the application of the Act, and thus FCC arbitration.

1
2 VH has requested that this Commission provide the necessary forum for arbitration under the
3 Act. Even if this Commission were to conclude that neither NPUC nor BCC met the definition
4 for a "state commission" under the Act, this Commission could proceed since, pursuant to 47
5 USC 252(e)(5) there has been a failure of a "state commission" to act. The situation is akin to a
6 decision by a State legislature to disband intrastate telecommunications regulation altogether,
7 leaving no state commission at all.

8
9 **THE PETITION TO THE NPUC WAS TIMELY.**

10 CCC argues, without merit, that the Petition for Arbitration filed with the NPUC was
11 untimely. Behind its creative arithmetic, CCC argues that it was somehow surprised or
12 prejudiced by the timing of VH's Petition. First, CCC raised but did not pursue this issue before
13 the NPUC and thus should be estopped from raising it now.¹⁸ Second, CCC cannot possibly be
14 prejudiced by the timing of the process in the context of the present Commission, since CCC was
15 put on notice as early as October 5, 2000, that the failure by the NPUC to arbitrate would result
16 in a request to this Commission. Third, the parties had stipulated that VH was free to restart the
17 regulatory clock as an accommodation to renewed negotiations subsequent to earlier CCC
18 refusals. Fourth, contrary to their claims, CCC was advised that the abrupt refusal to provide
19 geographically deaveraged loop prices and separate DLC and non-DLC loops left VH no
20 alternative but to seek arbitration.¹⁹ Lastly, given the lengthy negotiation period which did

21
22
23
24 ¹⁸ CCC raised this issue in comments with the NPUC, but the NPUC did not decline to arbitrate on that basis, nor
25 otherwise assign any merit to it.

¹⁹ See Exhibit C.

1 occur in this case, CCC's pleading is silent as to what value additional time would have in this
2 matter, other than yet a further delay.²⁰

3 Perhaps most importantly, VH's Petition was timely. The Act provides that the "period
4 from the 135th to the 160th day (inclusive)" runs from the date on which an incumbent local
5 exchange carrier **receives** a request...." [47 USC 252(b)(1), emphasis added]. CCC's negotiator
6 acknowledged receipt on April 28, 2000. VH filed its Petition for Arbitration on October 5,
7 2000, precisely 160 days after April 28, and thus timely. CCC speculates, without evidence, that
8 it may have received the April email prior to the 28th.²¹ If so, CCC did not acknowledge such
9 receipt and cannot now speculate the VH filing to be untimely. VH has diligently pursued the
10 only course that is available to seek interconnection with an unwilling ILEC, and should not, on
11 the basis of speculation, be punished for trying to allow the full 160 days.

12 13 **CONCLUSION**

14 The pursuits of VH to introduce competition in Churchill County, Nevada, can only come to
15 fruition with the implementation of the Act and the provisions that entitle VH the opportunity to
16 compete. Those provisions require that VH be permitted interconnection on just and reasonable
17 terms, and in the face of ILEC refusal, an opportunity to arbitrate those disputes before a fair and
18 impartial body. VH petitioned the state commission, who in turn declined arbitration thus
19 allowing this Commission to proceed. The BCC does not meet the definition, nor serve the
20 function, of a state commission under the Act. To the contrary, the BCC has a history of
21 maintaining an exclusive monopoly by explicitly outlawing competition through county

22 ²⁰ CCC cites Armstrong Communications, Inc., 11 CR 317 (Common Car. Bur. 1998), recon denied, 14 FCC Rcd
23 9521 (Common Car. Bur., 1999), for the proposition that the Petition of VH should be denied as untimely.
24 However, unlike the present case that case involved a situation in which a filing was made too early, deemed
incomplete by the Pennsylvania PUC, not rejected but instead was processed on a slower time frame.

25 ²¹ The context of the message does not communicate that an earlier date was being relied upon by CCC. Rather, the
context seems to indicate that the communication had just then been received. As the Commission well understands,
an email message is not received until the recipient downloads the message from his or her internet service
provider's server. CCC has not offered any evidence that this occurred prior to April 28, 2000.

1 ordinance. CCC cannot prevent competition by hiding behind the repeated refusals to
2 interconnect. No local exchange carrier is above the Act not even one that is county-owned and
3 controlled.


4 VH respectfully requests a finding by the Commission that the denial by the NPUC, or
5 alternatively the absence of a "state commission", sufficiently satisfies the condition under 47
6 U.S.C. § 252(e)(5), thereby requiring preemption of the state commission's jurisdiction and
7 assumption of the responsibility of the state commission so that the parties can proceed with
8 arbitration.

9 Respectfully submitted this 9th day of January, 2001.

10 VIRTUAL HIPSTER CORPORATION
11 SHAD NYGREN, PRESIDENT

12 1221 Lovelock Hwy
13 Fallon, Nevada 89406

CROWELL, SUSICH,
OWEN & TACKES, LTD.

14 By: 
15 STEVEN E. TACKES, ESQ
16 Nevada Bar No. 1027
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18 Carson City, Nevada 89703
19 775-882-1311
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CERTIFICATE OF SERVICE

I certify that I am an employee of the law firm of Crowell, Susich, Owen & Tackes, Ltd., and that on this 9th day of January, 2001, I caused a copy of the foregoing Opposition to Comments of the Board of County Commissioners of Churchill County, Nevada and Opposition to Comments of Churchill County Telephone and Telegraph to be sent, first class mail and/or overnight delivery, postage prepaid, to the following:

Ms. Magalie Roman Salas, Secretary
Federal Communications Commission
Office of the Secretary
Room TW-204B
445 12th St. SW
Washington DC 20554
Via Federal Express

Crystal Jackson, Secretary
Public Utilities Commission
1150 E. William St.
Carson City, NV 89701

Janice Myles
Common Carrier Bureau
Federal Communications Commission
Room 5-C327
445 12th St., SW
Washington DC 20554
Via Federal Express

Jeff Parker, Esq.
Commission Counsel
Public Utilities Commission
1150 E. William St.
Carson City, NV 89701

Churchill County Telephone and Telegraph
d/b/a CC Communications
c/o Don Mello, General Manager
50 West Williams Avenue
P.O. Box 1390
Fallon, NV 89407

Kristin McMillan, Esq.
Hale, Lane, Peek, et al
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Commissioners
10 West Williams Ave.
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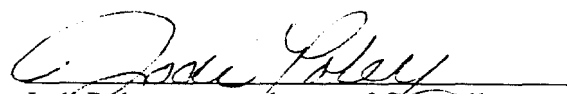

Jodi Poley, an employee of Crowell,
Susich, Owen & Tackes, Ltd.

EXHIBIT “A”

VIRTUAL ∞ HIPSTER

PO Box 1091
Fallon, NV 89407
(702) 428-2186

11/13/97

Mr. Don Mello, General Manager
Churchill County Telephone
77 N Maine
Fallon, NV 89406

Dear Mr. Mello,

Virtual Hipster has applied to be certificated by the Nevada Public Utilities Commission as a Competitive Provider of Basic Telecommunications Services within the State of Nevada. Please consider this a Bona Fide request for the following individual components of basic essential service provided by Churchill County Telephone:

1. Unbundled loops to existing customers.
2. Trunk connections to deliver traffic to your network
3. Interconnection with your SS7 network.
4. Access to Operations and Support Systems and necessary billing information.
5. Access to your existing billing system so that you may bill customers on behalf of Virtual Hipster.

Unbundled Access

Local Loops including but not limited to

Copper Pairs

Fiber Optic

SDSL / HDSL / ADSL and other xDSL lines

ISDN

Private Line Voice Grade Local Channel Service

Private Line Digital Data Local Channel Service

Private Line High Capacity Local Channel Service

Coaxial Cable

Wireless

Microwave & Spread Spectrum

Laser & other optical

Network Interface Device

Switching Capability

Local Switching Capability

Tandem Switching Capability

Interoffice Transmission Facilities

Call Related Databases and Signaling Systems

Signaling Networks including but not limited to

Signaling System Number 7 (SS7)

Service Switching Points (SSP)

Signaling Transfer Points (STP)

Service Control Points (SCP)

ISDN User Part (ISUP), Q.931, Q.2931

Advanced Intelligent Network (AIN)

Call Related Databases including but not limited to
Line Information Database
Toll Free Calling Database
Downstream Number Portability Database
Advanced Intelligent Network Database
Service Management Systems
Operations Support Systems
Operator Services and Directory Assistance

Access to all information necessary and sufficient to permit the monitoring of performance and configuration where appropriate of network elements and services being purchased at wholesale rates or being interconnected with. This will include at a minimum but not be limited to services such as:

Simple Network Management Protocol (SNMP)
Remote Monitoring (RMON)

Interconnection to existing and future Voice, Data, Video, Alarm, Signaling, Configuration, Control and Advanced Intelligent Networks for the transmission and routing of exchange traffic, exchange access traffic, or both; at any technically feasible point within the incumbent LEC's network including at a minimum:

The line side of the local switch.
The trunk side of the local switch.
The trunk interconnection points for a tandem switch.
Central Office cross-connect points.
Out-of-band signaling transfer points.
In-band signaling systems used with ATM, B-ISDN, ISUP and AIN.
The points of access to unbundled network elements.

Section 251 (c) (4) (a) of the Telecommunications Act states that the Incumbent Local Exchange Carrier has the obligation "to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers;". Therefore we also request wholesale rates for all services provided at retail to subscribers who are not telecommunications carriers including but not limited to:

Wholesale rates for all services identified in:

Tariff 17 - Exchange Access
Tariff 18 - Centrex Service
Tariff 20 - 911 Service
Tariff 21 - ISDN
Tariff 22 - Mileage
Tariff 23 - Private Line Local Channel Services
Tariff 32 - Foreign Exchange Service
Tariff 37 - Directory Listings
Tariff 41 - Toll Telephone Service
Tariff 43 - Operator Assisted and Local Calls

Wholesale rates for all other retail services not otherwise on a tariff including but not limited to.

SDSL / HDSL / ADSL and future xDSL services.
INTERNET
PAGERS
CELLULAR

Wholesale rates for Basic Telephone Services:

- Residential One Party
- Business One Party
- PBX Trunks
- Call Waiting
- Call Forwarding
- Three-Way Calling
- Speed Calling
- Caller ID
- Call or Line Block
- Call Return
- Call Screening
- Call Trace
- Preferred Call Forwarding
- Remote Call Forwarding
- Repeat Dialing
- Call Acceptance
- Anonymous/Private Call Rejection
- Do Not Disturb with PIN Override
- Voice Mail
- CENTREX
- ISDN

Physical Collocation at the following facilities:

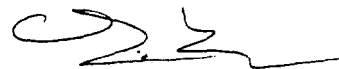
- Maine (423 switch)
- Pioneer (867 switch)
- Southside
- Rattlesnake
- Fairview Peak

Notice of Changes in the information necessary for the transmission and routing of services using that local exchange carrier's facilities or networks, as well as any other changes that would affect the interoperability of those facilities and networks. This should include regular meetings between Virtual Hipster, Churchill County Telephone and other Local Exchange Carriers to assist in coordinated network planning.

- Number Portability
- Dialing Parity
- Access to Rights-of-Way
- Reciprocal Compensation

Time is of the essence so we would appreciate your prompt identification of any technical issues with regard to the above, and wholesale rates ASAP.

Sincerely,



Shad Nygren

cc Steve Tackes
Nevada Public Service Commission

EXHIBIT “B”



GVNW CONSULTING, INC.

8050 SW WARM SPRINGS STREET
SUITE 200
P.O. BOX 2330
TUALATIN, OR 97062
TEL 503.612.4400
FAX 503.612.4401
www.gvnw.com

August 25, 2000

Larry Blank
TAHOEconomics
P.O. Box 3722
Carson City, NV 89702

Dear Larry:

We are in receipt of your proposed rates for Unbundled Network Elements (UNEs) for an interconnection agreement between Churchill County Communications (CCC) and the Virtual Hipster. We have discussed these proposed rates. While CCC may not agree that the rates proposed in the Hatfield 5.0A actually represents CCC's network or costs, they may be willing to accept it for UNE pricing with a couple of exceptions.

At the current time, the 8th Circuit Court has thrown out the validity of the "hypothetical network" for UNE pricing. The Hatfield 5.0A has built into its rate development many hypothetical network assumptions. While some of these assumptions have resembled some of the large companies, they do not represent CCC's operations. We have updated the model for actual costs and made other adjustments in an attempt to reflect CCC's network. However, the non-DLC and DLC loops has never been calculated based on CCC's network. CCC has not internally pulled this information and the Virtual Hipster chose not to pay for that type of actual detail. Also, the density or zone calculations do not reflect Fallon or Churchill County.

For these reasons CCC cannot accept the rate development and the resulting UNEs which have been separated into four zones and DLC and non-DLC rates. The average rates shown in the 5.0A model on the far right and under the "(all)" rows would be more agreeable to CCC.

We have plans to have a meeting on the 28th and 29th of September where we can discuss these issues in more detail if you would like. Please give me a call if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Ben".

Ben Harper
cc. Dale White, Churchill County Communications

EXHIBIT “C”

TAHOEconomics, LLC

Larry Blank, Ph.D.
P.O. Box 3722
Carson City, Nevada 89702

September 5, 2000

Mr. Ben Harper
GVNW Consulting, Inc.
P.O. Box 2330
Tualatin, OR 97062

Dear Mr. Harper,

Your letter dated August 25, 2000 is an unacceptable response to the unbundled network element rate schedule I provided you and Churchill County Telephone on August 17, 2000. It may come as a surprise to you that geographically deaveraged rates have become commonplace for unbundled loop provision across the nation. I know of no incumbent local exchange carrier not utilizing geographically deaveraged rates for unbundled loops. Indeed, here in Nevada, both Nevada Bell and Sprint of Nevada adopted geographically deaveraged rate zones for unbundled loops, a rate design accepted by the Public Utilities Commission. Furthermore, your client currently charges deaveraged rates to its retail customers in four zones.

As early as March of this year, I fully informed you that I intended to develop a rate structure to be consistent with the four retail rate zones of Churchill County Telephone Company, deaveraged by DLC and non-DLC lines. Such a rate design serves to accommodate your client as much as mine. You now have had at least five months to consider such a rate design but never raised a concern or objection. We requested actual line counts to confirm those utilized by the HAI Model only to have your client demand \$3,800 to provide such data (March 22, 2000 Letter from Don Mello to Shad Nygren). Yet, in your letter, you conclude "the density or zone calculations do not reflect Fallon or Churchill County" even though in the previous sentence you state that "CCC has not internally pulled this information." If you do not have the data, on what do you base this conclusion? My client has always been comfortable with the density zone model and rate design in its current form. If you had concerns about the rate design produced by the model, you and your client could have performed checks using Churchill County data several months ago.

I have spent several days, at no small expense to my client, attempting to address every cost model concern you provided to me. I fully responded to each of your issues in the most cooperative manner. This has resulted in over a 50% increase in the total costs

relative to those I first presented to you. I consider it unproductive for you to now fall back on contesting the rate design I presented to you over five months ago. I particularly find it odd that as soon as we complete the UNE rate schedule and the interconnection agreement you decide to break the cooperative spirit in such a manner. Your August 25th letter is the most onerous example of bad faith dealing throughout the dozens of cases and negotiations with which I have been associated.

If your client reconsiders the position expressed by you, they are free to contact Mr. Steve Tackes, Attorney to Virtual Hipster Corporation, at 775-882-1311. We intend to seek appropriate legal or regulatory remedy by September 15th unless your client indicates a willingness to accept a deaveraged rate design for unbundled loops. This may include a petition for arbitration before the Public Utilities Commission of Nevada. I hope we can move beyond this point and have a productive meeting on September 29th.

Sincerely,



Larry Blank

Cc: Don Mello, General Manager for Churchill County Telephone;
Steve Tackes, Esq.; Shad Nygren, President of Virtual Hipster Corporation

Crowell, Susich, Owen & Tackes, Ltd.

A PROFESSIONAL LAW CORPORATION

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September 27, 2000

Kristin McMillan, Esq.
Hale, Lane, Peek, et al.
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Las Vegas, NV 89102

SENT VIA email And US MAIL

Re: Virtual Hipster

Dear Kristin:

This letter is sent in reply to your email of this morning.

First, it was not my understanding during our telephone call that Churchill County Telephone (CCT) would or should terminate discussions with Virtual Hipster (VH) or cancel the meeting they had set up to work out technical issues. In fact, I informed you of the meeting and told you that it was technical in nature and did not require attorney presence. Your instructions to your client to terminate that meeting amount to throwing gasoline on a fire of bad faith and failure of CCT to act timely, which I have diligently been trying to avoid becoming an issue in this matter.

Secondly, although you did request for me to send you a letter, it comes equally as a surprise to me that you would instruct your client to cease all further activity until you receive that letter. I had thought that we were trying to move forward and resolve matters, not aggravate them. Be that as it may, your refusal to provide us with any feedback on our proposed interconnection agreement, effectively prevents us from providing you with a response as to any "deal breakers". At this point, my client views your action as yet one more dilatory act to prevent interconnection and competition in Fallon, Nevada.

To the extent that you are unfamiliar with the history of this case, here are the facts. On August 6, 1997, and again on September 8, 1997, VH requested interconnection with CCT and requested rates for both interconnection and collocation. On October 23, 1997, CCT refused to allow interconnection on the basis that VH did not yet have a CPCN from the NPUC as a competitive provider of telecommunications services. Such refusal was in direct violation of the Telecommunications Act of 1996, and the FCC First Report and Order (CC Docket 96-98, issued August 8, 1996) which states:

"For example, a party may not refuse to negotiate with a requesting telecommunications carrier, and a party may not condition negotiation on a carrier first obtaining state certification." [para 154]

This was pointed out to CCT and CCT was urged to proceed.

On November 13, 1997, VH again requested interconnection and unbundled network element rates (UNEs) from CCT. CCT again objected and refused to negotiate interconnection. This time CCT claimed that it had a rural exemption which CCT argued, until lifted, prevented competition from occurring in its service territory. VH was thus required to, and did, petition the state utilities commission (Nevada Public Utilities Commission- NPUC) to lift the exemption pursuant to 47 USC 251(f). As such, CCT was then required to "prove to the state commission that they should continue to be exempt..." [FCC Order CC 96-98, August 8, 1996, para 1263] Until March 6, 1998, CCT refused to negotiate or otherwise allow interconnection. Ultimately, at the NPUC hearing, CCT backed down from its opposition and agreed to allow interconnection, and further agreed to provide rates for UNEs within 1 year, ie. By March 5, 1999.

Considerable time and expense were spent by both VH and CCT on trying to develop UNE rates. In April of 1999, VH still had not received the UNE prices, even though VH was under the understanding that the parties would use the HAI model approved by the NPUC for use with other ILECs. In May of 1999, CCT proposed a resale agreement with CCT. In June of 1999, VH and CCT agreed to make two minor changes to the resale agreement so that the parties could proceed. VH also found errors at that time to the HAI rates developed by Mr. Earl Bishop on behalf of CCT. VH subsequently sought expert advice on the proper use of the HAI model, inputs and outputs. Dr. Larry Blank, on behalf of VH, made necessary corrections and provided a complete set of HAI model output to CCT's consultant on April 25, 2000. Subsequently, Dr. Blank worked extensively with CCT's consultant to correct input errors, change inputs that did not correspond to the data publicly reported by CCT, and make other model changes to accommodate concerns expressed by CCT's consultant. Based on the results of these model changes, he then mailed a complete two-page UNE price list to Don Mello on August 17, 2000. Dr. Blank was led to believe that the parties were close to final rates, when out of the blue, CCT (via Ben Harper) notified Dr. Blank that CCT would refuse any deaveraging of unbundled loop rates, thus destroying the work that had been done during February 2000 through August 2000.

Considerable time and expense were spent trying to develop a collocation arrangement. As regards collocation, I personally met with CCT, physically looked at the collocation space, and had the understanding that those matters were resolved. I have only recently learned that after everything was worked out, CCT told my client that "under the Telecom Act they had no obligation to provide any right to that space without a signed interconnection agreement for UNE", and then refused to proceed with any construction or even ordering the electrical circuit breaker. My client is still willing to make payment immediately as long as CCT begins construction immediately.


As for your email message regarding the UNE rates and interconnection agreement, VH takes issue with your characterization of them as moving targets. On April 25, 2000, VH sent the rates and calculations to CCT's consultant, as directed by CCT. Upon CCT's failure to provide a proposed interconnection agreement, VH provided on June 19, 2000, a proposed interconnection agreement. To accommodate concerns expressed by CCT's consultant, model modifications were made by Dr. Blank that led to a complete schedule of UNE prices provided to CCT on August 17, 2000. I cannot understand why CCT would not

Kristin McMillan, Esq.
September 27, 2000
Page Three

have provided you with a copy of these, nor why you would ask us for something different at this time. CCT has failed and refused to provide any feedback on the proposed interconnection agreement. At any event, attached are both the agreement and UNE prices.

VH is still interested in trying to resolve matters with CCT. However, if getting the attorneys involved is simply another dilatory act (rather than a path to a solution as was hoped), VH will have no alternative except to proceed with a petition for arbitration.

Sincerely,

A handwritten signature in black ink, appearing to read "Steven E. Tackes", with a long horizontal flourish extending to the right.

Steven E. Tackes, Esq.

Cc: Shad Nygren
Dr. Larry Blank

EXHIBIT “D”

BEFORE THE PUBLIC UTILITIES COMMISSION OF NEVADA

-ooo-

In Re Petition of VIRTUAL HIPSTER)
CORPORATION for arbitration to)
establish all components of an)
Interconnection Agreement with)
Churchill County Telephone)
Company d/b/a CC Communications,)
Inc., or alternatively, an Order)
declining request based on)
jurisdictional uncertainty.)

DOCKET NO. 00-10009

TRANSCRIPT OF PROCEEDINGS

PREHEARING CONFERENCE

9:02 a.m., Wednesday
November 1, 2000

Offices of the Public Utilities Commission
1150 East William Street
Hearing Room A
Carson City, Nevada

Reported by:

JERRY J. SILVEN, CCR #55